

General Information Letter: Taxation of unrelated business income of cemeteries.

July 28, 1998

Dear:

This is in response to your letter dated June 3, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter (GIL) which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

xxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxxxxxx xx xxxxxxx xxxxxxx represents nearly three hundred funeral homes in the xxxxxxxxxxxx area. As such we were concerned when information was recently shared with us disclosing that the Internal Revenue Service had recently exempted cemeteries selling caskets from charging sales tax to consumers under certain circumstances. Particularly of concern is the fact that funeral homes which sell the exact same item must charge sales tax under nearly all circumstances.

Enclosed please find a copy of a letter that was mailed to Mr. xxxxxxx of the Federal Trade Commission earlier today. It concerns cemeteries having the ability to sell caskets without charging consumers sales tax. We feel that this exemption provides cemeteries with an unfair advantage. As you may know, funeral homes historically have sold caskets to the families they serve. A funeral home is the entity which most closely is associated with the sale and use of caskets in funeral service.

It has been several years since you and I have spoken. If I recall, it pertained to the applicability of sales tax on caskets that were being shipped out of state with human remains. Nevertheless, we thought we should share this new information with you. We are not opposed to charging consumers sales tax on caskets, nor are we opposed to competition, but we are opposed to unfair advantages being granted under any circumstances.

Does the state of Illinois Department of Revenue have a policy regarding the exemption of cemeteries in this matter? If so we would appreciate a review and reconsideration of this policy. Please advise me in this regard.

Ruling

This GIL addresses your question in the context of Illinois income tax. While your question was framed in regard of Illinois sales tax, IRS Private Letter Ruling (PLR) 9814051, referenced by your letter, pertains to an exemption from

income tax. Accordingly, your letter was forwarded to the Department's Income Tax Division for response.

PLR 9814051 involved a certain cemetery company exempt from federal income tax by reason of IRC section 501(a). It was there determined that the cemetery company's exemption under section 501(a) would not be adversely affected by its sale of caskets. Further determined was that income derived from such sale would not constitute unrelated business taxable income.

Generally, Illinois income tax is assessed against a taxpayer's "base income" as determined under section 203 of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 et seq.). An exception is provided for, however, in the case of an organization exempt from federal income tax by reason of IRC section 501(a). Specifically, section 205(a) of the IITA provides:

The base income of an organization which is exempt from the federal income tax by reason of Section 501(a) of the Internal Revenue Code shall not be determined under Section 203 of this Act, but shall be its unrelated business taxable income as determined under Section 512 of the Internal Revenue Code.

As section 205(a) indicates, Illinois income tax law here follows federal income tax law with the result that Illinois income tax is assessed only upon the unrelated business taxable income of an organization exempt under IRC section 501(a). Thus, Illinois income tax will not extend to income derived from sales of caskets by cemetery companies exempt from federal income tax under IRC 501(a), so long as such income does not constitute unrelated business taxable income under federal income tax law.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Brian L. Stocker
Staff Attorney - Income Tax